



## **Panel of Experts on Redress, April 2017, Response to Historical Institutional Abuse Inquiry Redress Recommendations: The Panel of Experts on Redress Position Paper and Recommendations**

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**RESPONSE TO HISTORICAL INSTITUTIONAL  
ABUSE INQUIRY REDRESS  
RECOMMENDATIONS**

**THE PANEL OF EXPERTS ON REDRESS**

**POSITION PAPER & RECOMMENDATIONS**

**APRIL 2017**

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## SUMMARY

The Panel of Experts on Redress is made up of individual survivors, survivor groups, human rights organisations, academics, members of the legal profession, and national and international experts. The Panel is a survivor-driven process; its primary objective is to bring survivors' views to the foreground. The Panel has published two reports - '*What Survivors Want from Redress*' and '*A Compensation Framework for Historic Abuses in Residential Institutions*'.<sup>1</sup> The Panel also commissioned Quarter Accountants to undertake an independent cost analysis of the proposed compensation scheme.<sup>2</sup> All three reports were published and launched in Stormont during 2016.<sup>3</sup>

The primary focus of this position paper is an analysis of the proposed compensation package for historical institutional child abuse in Northern Ireland. Key elements of the proposed Redress Board's design are explored; a number of structural, procedural and substantive flaws are identified and discussed in detail. The effects of the proposed procedures on rights, dignity and interests are assessed from the standpoint of survivors.

This position paper concludes that the Historical Institutional Abuse Inquiry (HIAI) recommendations for compensation fall short of survivors' needs. If implemented in its current form, the scheme could impede recognition, silence survivors' voices and fall short of fair and just compensation. In order to address issues of access to justice, adequacy of compensation and equality of treatment, a number of changes should be made to the scheme and *every element should be informed by input from survivors*.

### **The Panel of Experts makes the following recommendations:**

- Increase the standard payment to be consistent with those in other jurisdictions
- Expand the scope of eligibility for the standard payment
- Adjust the standard payment to take into account the amount of time spent in the institutions

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<sup>1</sup> Ulster University provided funding to cover publication costs.

<sup>2</sup> Atlantic Philanthropies provided a small amount of funding to cover the work of the cost analysis report.

<sup>3</sup> The Panel has not received any other sources of funding for the extensive work it has undertaken. Amnesty International UK has provided significant and ongoing support.

- Make legal aid (legal representation) available for all of the survivors regardless of means
- Take a multidisciplinary approach to adjudication and the selection of adjudicators
- Assess and evaluate harms and acts separately
- Levels of compensation should be comparable to those in other common law jurisdictions that have dealt with similar acts and harms
- In the case of a deceased claimant's proven claim, the heirs should receive 100% of the compensation awarded
- Correct potential inequities caused by the lack of investigation through flexible evidentiary rules and the option for victims/survivors and witnesses to give oral testimony
- Loss of opportunity and earnings should be included
- The balance of probability standard should be replaced with the plausibility standard of proof for causation
- Where gaps exist in the documentary evidence, the claimant should not be punished. On the contrary, there should be a presumption that the missing evidence would benefit the claimant
- Support all hearing decisions with detailed reasons.

It is hoped that the suggested improvements contained in this position paper will inform policy development to meet the needs of survivors and contribute to the speedy resolution of redress for historic institutional abuse.

## **Part 1: Monetary compensation: obstacles, impediments and opportunities**

The HIAI Report recommends a state-funded compensation scheme. Two categories of compensation are available under the proposed scheme: a standard payment for low-level systemic abuse, and a payment for serious personal abuse based on individual assessment. Further recommendations include an apology; a memorial; the appointment of a Commissioner for Survivors of Institutional Abuse (COSICA); and social services support in health, literacy, numeracy, counselling, addictions, employment and education. The HIAI report findings provide clear evidence of widespread abuse and systemic failings in children's 'care' homes from 1922 to 1995 in Northern Ireland. This section analyses the compensation scheme proposed by the HIAI Report and survivors' responses to the proposals. It is divided into two sub-sections: (a) monetary compensation, and (b) design and processes.

### ***A: Categories of compensation***

#### ***Standard payment***

The HIAI Report recommended a state-funded compensation scheme. The method of administering it is to create a specific Historical Institutional Abuse Redress Board for that purpose. The Report stipulates two categories of compensation: (1) 'lump sum'/standard or common experience payment, and (2) individual assessment for more serious abuse, which are not mutually exclusive. Internationally, some redress schemes provide compensation in both categories (Canada Indian Residential Schools and Queensland Government) but most employ one or the other.

Under the HIAI proposals, to be eligible for compensation under both categories survivors must show, on the balance of probabilities, that they suffered abuse in the form of sexual, physical or emotional abuse, or neglect or unacceptable practices, between 1922 and 1995; were resident in a residential institution in Northern Ireland as defined by the Terms of Reference of the HIAI; and were under the age of 18 at the time (HIAI 2017:238). If these requirements are met, a claimant will be eligible to apply for both categories of compensation. The standard payment for claimants is set at £7,500. In this regard, the HIAI Report states that:

[I]n some, though not all, of the institutions investigated there was a harsh environment that affected all the children in that institution. Other children who were

exposed to that harsh environment, but were not themselves abused, were still affected by the general regime and the impact of what they witnessed, and therefore were also abused. We regard that such persons also should be regarded as having been abused and should be eligible for an award of compensation (HIAI 2017:238).

The HIAI report stipulates that some institutions in its remit are covered by the common experience payment but not all because not all residences had harsh and brutal environments (HIAI 2017:234).

The survivor-led Expert Panel is of the view that harshness and brutality requirements are too narrow as they do not acknowledge the loss of comfort and protection of family life that all of the residents suffered. **The Expert Panel therefore recommends that in addition to the 22 institutions investigated by the HIAI, the claimants who resided in the 43 homes or institutions that were not investigated should be eligible for the common experience payment for loss of family life. In this way, both groups will be treated equitably and can receive a standard or common experience payment by simply proving they resided at an institution or home within the HIAI's remit.**

The HIAI recommendation for £7,500 as a standard payment was **based on two judgments of the High Court of Justice in Northern Ireland, *McKee v. Sisters of Nazareth* (2015) and *Irvine v. Sisters of Nazareth* (2015).** In both cases, although the plaintiffs did not succeed because of time limitation bars, the judges in *obiter dictum* said that they would have awarded 'a modest sum' to reflect the nature of the harsh, uncaring and brutal regime that was in place in Nazareth Lodge. **In the *McKee* case, the plaintiff resided for only 2½ months in the institution and was awarded £6,500, whereas in *Irvine*, the plaintiff resided at the school for nine years and the court would have awarded her £7,500.**

In justifying the arbitrary amount of £7,500 as a fair common experience payment for all the claimants who resided in the institutions under its remit, the HIAI said it had no reason to depart from the amounts paid in the two cases discussed above (HIAI 2017:246, para. 75). The HIAI added the further rationale that the lump sum of £7,500 makes it 'easier to identify possible total cost of the redress' and it is 'easier to administer' (HIAI 2017:234, para. 24). **The survivor-led Expert Panel believes that these are not adequate reasons to justify a 'one-size fits all' standard payment that ignores residence-duration and overlooks the fundamental legal principle of *restitutio ad integrum*, i.e. that the amount of compensation must be calculated to as closely as possible place the plaintiff in the position he or she would**

have been in had the injury not been committed. There may be a suspicion that, when a method for determining financial payment is introduced without proper justification, cost efficiency is being favoured over a genuine attempt to compensate individuals fairly. There are, of course, other considerations when designing a redress scheme. The Compensation Advisory Committee in the Republic of Ireland put it in the following way: ‘our concern here is with compensation as a form of solace designed to provide some degree of comfort to the victim for his or her injury and to make some attempt to put right the wrong which he or she has suffered’ (2002:41, para. 5.5).

In the five workshops held by the survivor-led Panel of Experts *before* the HIAI Report was published, **survivors expressed the view** that compensation was important because it was a **symbolic measure; a tangible acknowledgement of the seriousness of the wrongdoing** and how the state or institutions had failed to deal with it. There was general consensus that financial compensation, while helpful and desirable, could not by itself repair the harm done. Nonetheless, clear views on compensation were articulated. Two distinct sources of compensation were proposed – a common experience payment and individual assessment. It was further stated by survivors that they should be able to apply for compensation from both sources.

**With respect to the amount of compensation, the survivors agreed that an appropriate common experience payment should start at £10,000 and should be graduated in accordance with how many years an individual spent in a residential institution.** This would acknowledge that the longer a child resided away from his or her family in an institution characterised by the HIAI and the courts as ‘harsh and brutal,’ the greater the harm the child would have suffered. Based on the advice of survivors, the Panel of Experts proposed a standard base payment of £10,000, and an additional £3,000 (or negotiated amount) to be paid for each additional year or part of a year of attendance to recognize the duration and accumulation of harms over time.

**The response of survivors to the HIAI recommendation of a flat £7,500 common experience payment to all was that it fell short of expectations or was derisory.** In the survivor-led Panel questionnaire, almost all survivors (92.1% = 116) stated that the **standard payment should be higher**, it should *not* be the same for everyone, and it should **reflect the length of time spent in the institution**. Almost all respondents to the questionnaire (90.5% = 114) stated that there should be additional compensation for each year a survivor



spent in an institution. Their view was that those who suffered the most should get the most compensation. Here are some of the written responses to the open-ended question:

This is a farce amount of compensation recommended ... it thwarts the purpose of the Inquiry to give justice to the victims. Decent compensation was paid in the Republic. (Code: ID103)

Government must standby survivors in their quest for compensation; you can't put a price on ABUSE!! The Inquiry recommendation is a complete, utter insult and disrespect to the suffering of survivors of Historical Institutional Abuse. Aged 60!! (Code: ID105)

**At the public meeting held on 3 February 2017, there was palpable anger voiced by survivors in response to the proposed £7,500 lump sum:**

The standard payment amount of £7,500 is not enough – for systemic abuse through a system that has failed people – it is not enough for abuse over many years!

The standard payment is very low in comparison to amounts awarded under employment law – under hurt feelings up to £10000 can be awarded! If some people are getting paid high amounts of money for hurt feelings ... we're looking at a childhood destroyed and a future destroyed ... and we need to make the State pay and not pay minimally but to pay the maximum ...!

**The above empirical data clearly show high levels of dissatisfaction with the proposed standard payment but it is important to examine whether survivors' expectations were unreasonable.** In doing so, it is helpful to examine the quantum of awards in other jurisdictions. In the Republic of Ireland, the Magdalen Laundries scheme calculated *ex gratia* compensation payment with reference to residence-duration in one or more of the institutions. The programme had two heads under which a claimant could make a claim: residence and labour. Under the first head, because these institutions were harsh and stigmatizing places of confinement, the scheme paid a minimum of €10,000 for the first three months, then an additional €500 per month of residence, up to a 6-year maximum of €40,000. In addition, the scheme paid €500 per month in compensation for lost wages, up to a 10-year maximum of €60,000. However, the maximum lump sum that could be claimed was €50,000, with any remaining compensation put into a life pension paid weekly (Quirke 2013:43). Those aged 66

years and older received a pension equivalent to the top state pension (€230 weekly). Therefore, based on time spent in the Laundries, a life income was provided *in addition* to the lump sum payment. Moreover, survivors are eligible for *both* residence and labour payment streams.

It may be instructive to consider claims for ‘injury to feelings’ under employment law. In the leading case of *Vento v. Chief Constable of West Yorkshire Police* (2002), the UK Court of Appeal set clear guidelines for the amount of compensation to be given for injured feelings, with three bands of potential awards, which is followed in NI. This compensation for injury to feelings (known as the Vento band and subsequently updated by Da’Bell and Simmons) ranges from: £19,800-£33,000 (top band); to £6,000-£19,800 (middle band); to £660-£6,600 (bottom band). A further two examples are worth mentioning. A Dublin bus driver was recently awarded €12,500 damages along with his legal costs by the Circuit Civil Court against his employer for ‘very offending’ graffiti written on a toilet door at his workplace. He ‘said that he had suffered humiliation, distress, hurt and embarrassment’ (Cherfi 2017). In May 2014, the families of six men killed during the conflict in Northern Ireland were awarded £7,500 each in damages in a High Court judgment. The payments were for unlawful delays in holding inquests (BBC News 2014).

**Judged against the above compensation awards, it is difficult not to conclude that the standard payment proposed by the HIAI Report is insufficient, particularly given that the subject matter is historical child abuse.** Hamber (2006:571) makes the point that redress is a social barometer for victims; it ‘tells the victim much about their place in society’. It also sends out a message of recognition, acknowledgement, responsibility and intent to do justice. The following quote is **typical of survivors’ views** and the meaning or symbolism of money:

I suppose it’s like a sense of worth. Whatever the amount of money that is actually dished out; it’s somebody saying we’re acknowledging that you went through a lot, and you went through so much that we think you deserve this amount of money. It’s not because its money, it’s because it’s the only form of acknowledgment that we’re ever going to get. We can’t ask for anything else because our lives are not going to be given back ... So the money in a sense would give you something back, some peace of mind, something back for what

they did to us but it also puts a value on who you are and gives you a sense of worth. (Interview F: January 2017)

**To conclude, a common experience payment of an inflexible set amount to all survivors regardless of how long they were institutionalized is not a fair and just calculation of compensation. It is not consistent with the fundamental principles of tort law nor is it commensurate with the amounts awarded in settlements for claimants in similar circumstances such as the Magdalen Laundries or damages awards in courts for similar non-pecuniary harms.<sup>4</sup>**

### *Individual assessment for serious abuse claims*

The HIAI Report recommends that eligible claimants who suffered more serious, individualized forms of abuse should be entitled to a payment up to a maximum of £72,500, in addition to the standard payment (£7,500). To succeed in a claim for serious, individualized abuse, claimants must prove the abuse happened and caused them harm. The HIAI recommends that there should be **no compensation for loss of income or loss of opportunity**. Survivors seeking compensation for these losses are directed to pursue a civil claim in court.

The standard of proof recommended by the HIAI is the balance of probabilities test for both the commission of the abuse and the resulting harms. If imposed, this standard will be difficult if not impossible for most claimants to meet, especially for the harms. When most claims will be decades old, the challenge of proving on the balance of probabilities that the acts perpetrated when claimants were children resulted in the harms they have experienced, or are experiencing, is great. This is because over years many other events happen in a person's life that make determination of causation very difficult. If the purpose of the redress plan is to fully compensate claimants for abuses suffered in institutional care, the plausibility standard is more appropriate. In Canada, the high rate of success for survivor claims is in large part due to the plausibility standard for proving harms. **Where redress processes are not designed to be victim-centred or victim-friendly, genuine victims' applications for**

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<sup>4</sup> In Canada, survivors of Indian Residential School abuse received a common experience payment that provided \$10,000 for the first year or portion of a year in a residential school and \$3,000 for each year or portion of a year thereafter. This was based on the principle that those who resided in the schools the longest endured the most harms and that the harms should be reflected in the amount of the common experience payment. Residential Schools Settlement, Official Court Notice Website, <http://www.residentialschoolsettlement.ca/english.html> (accessed 10 March 2017).

**compensation are likely to fail, particularly if unreasonably high standards of proof are set. If some survivors are left out of compensation or struggle to be ‘heard’, there is the potential to re-traumatise and exacerbate harm. The Expert Panel is of the view that the plausibility standard should be applied to the cases involving serious harms.**

Once a claim for individualized abuse is proven, the HIAI recommends that the amount of compensation should be calculated based on a pre-determined tariff table. The idea of a tariff table to calculate and award monetary value according to the severity of abuse and consequential injury is a sensitive issue. In the entire Panel workshops held with survivors, this topic clearly made participants uncomfortable and unsettled. What was evident from the discussion is that for survivors there is and can be no relationship drawn between the severity and the frequency of abuse and its corresponding impact on individuals. Participants acknowledged that creating a tariff table and quantifying individual experience was a complex and difficult task. While this was clearly an emotive issue and concerns were raised, there was acceptance that some guidelines were necessary to ensure fairness, equality and consistency for survivors who experienced similar abuses and harms.

**Having heard survivors’ views, the Panel of Experts propose that, in addition to the lump sum common experience payment, survivors should have the choice of claiming additional compensation for individual acts of serious physical, sexual and severe emotional systemic abuse. In other words, eligibility for the standard payment should not have any bearing on whether or not a claimant can claim for serious abuse. The definition of ‘abuse’ should be the same or similar to that in the Irish compensation model (Residential Institutions Redress Act (2002), sec. 1(1)). A tariff model should be adopted to quantify the amount of compensation to be awarded for individual acts of abuse and the harms that flow from them. This method will help to maintain sensitivity and flexibility at an individual level while providing consistency, fairness and predictability for the group as a whole.**

Under the HIAI recommendations, the calculation of compensation for individualized serious abuse, the abusive acts and the harms that flow from them, would be compensated in an undifferentiated sum. **In response, the survivors said the acts and harms should be considered and evaluated separately. As they point out, not all survivors experience the effects of their injuries in the same way.** There may be cases where individuals who suffered ‘low-level’ abuse have been left utterly shattered. On the other hand, there are

survivors who have suffered the most extreme forms of sexual abuse in their childhood and somehow managed to readjust themselves and get on with their lives.

In a tariff based system of calculation, it is important that sexual, physical, emotional and psychological abuses and harms are explicitly defined and described. In the UK and Ireland, there is a settled degree of legal certainty over the definitions of abuse (such as emotional, physical and sexual) in the relevant categories that we would reasonably expect to be applied. However, there is **less certainty over the concepts of ‘harsh environment’, ‘neglect’, ‘unacceptable practices’ and ‘exceptional circumstances’**. **Unless concepts and terms are explicitly defined and unambiguously described, a consistent system of evaluation will be less transparent, equitable and easily understood.** The research by Skold et al. (2016) shows how concepts can be re-interpreted with devastating consequences for the **outcome of survivors’ compensation claims**. The Swedish compensation scheme is distinguished by the very high proportion of rejected claims. More than 54% of survivors who applied to the Financial Redress Board were rejected. Skold et al. (2016) contend that a significant factor that contributed to this picture was the interpretation of legal requisites which addressed the following concepts: ‘severe abuse’, abuse that happened in conjunction with care, ‘sufficient and/or credible evidence’, in conjunction with reliance on sometimes distorted and poorly kept archives and documents that required a great deal of expertise to track down, and the fact that applicants did not have legal representation. On the other hand, in Canada, the Indian Residential School Settlement Agreement clearly set out 7 categories of explicitly described abuse and 5 levels of harm which it described in detail. The success rate for claims filed was 84.6% with an average payout of \$111,805. To be awarded a common experience payment, claimants only had to prove the years they resided in an Indian Residential School (Canada Statistics 2016).

**A factor almost of equal importance to the interpretation of key terms is the identity of those responsible for drafting the definitions.** Survivors voiced particular concern about this at the public meeting. They felt that unless they were heard with respect to the definitions of abuse and harms, there was a strong likelihood that some experiences would be overlooked, misunderstood or not considered compensable.

Moreover, **survivors disagreed with the recommendation of the HIAI that loss of income or loss of opportunity should not be compensated. From the standpoint of survivors, loss of opportunity should be central to the compensation package.** Common themes

experienced by survivors were that they ‘missed out’ on an adequate education which resulted in reduced chances, and this was compounded by living in a harsh environment and, for some, physical, emotional and sexual abuse. **In response to the survivor-led Panel’s question whether loss of opportunity should be included in compensation, almost all survivors agreed that it should (90% = 113). It is clear from the empirical data that the IA proposed payment falls short of survivors’ expectations.**

**The Panel of Experts proposes that on grounds of fairness and justice, compensation for loss of income/loss of opportunity should be provided. This would require that the £80,000 cap be raised to accommodate these claims. Loss of opportunity/income was included in both the Republic of Ireland redress process and in the Canadian agreement. The cap in the former was €300,000 and \$250,000 in the latter.** In the Republic of Ireland, the Residential Institutions Redress Board (RIRB) had the discretion to make an additional award not exceeding 20% of the normal redress award where it was satisfied that it was appropriate to do so. The average value of awards in the Republic was just over €62,245, the largest award being €300,500 (RIRB 2014:13). Applications completed by the RIRB up to 31 December 2014 show that the number of offers made following settlement were 11,988. Awards made following hearings amounted to 3,000 (RIRB 2014:24). It appears that the vast bulk of cases were settled and decisions were based on paper evidence submitted. It is also worth pointing out that, of the 16,617 applications completed (to 31 December 2014) 0.31% were awarded €200,000-€300,000 and 1.80% €150,000-€200,000. The majority of settlements were as follows: 13.32% were awarded €100,000-€150,000; 48.29% €50,000-€100,000; 36.29% up to €50,000 (RIRB 2014:24-26). One of the highest awards in civil litigation in Northern Ireland over £50,000<sup>5</sup> was for loss of opportunity. The mother of the individual in question travelled from the South of Ireland to the North to have her baby. Had she gone in the opposite direction towards Dublin and placed the child in ‘care’ there, this survivor could conceivably have been awarded up to €300,000 for loss of opportunity. Survivors believe there should be parity of treatment across the island of Ireland. Indeed, it was pointed out that the same personnel (religious orders) operated on both sides of the border and children were often moved from one jurisdiction to another.

**One of the HIAI Report recommendations that survivors welcomed was that compensation awards should not affect social security payments and should not be**

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<sup>5</sup> This figure has been quoted to protect the identity of the survivor; personal correspondence with the survivor, February 2016.

taxable. Indeed, one of the key issues of concern voiced by survivors in workshops was the potential impact of compensation on social security benefits and the hardship and trauma this could cause. Another recommendation welcomed by the survivors was that claimants over 70 years of age or in poor health should be given priority (HIAI 2017:240-241).

### *HIAI report sample of litigation cases*

It is worth considering the sample of cases used to determine the level of compensation for serious abuse. The HIAI Report referred to a sample of 67 civil abuse cases in Northern Ireland courts, the majority of which paid out amounts below £30,000. Using this data, the HIAI considered that the redress for survivors of institutional abuse should follow a similar pattern. (HIAI 2017:244-245, 249, Appendix 3). While the sample of 67 settlements is a reasonable size, **it is a not a representative one. There are 147 civil abuse cases presently before the courts that remain unresolved. This means that the HIAI relied on results in only 31% of abuse cases that have been filed.** To rely on such a small percentage of abuse cases filed will likely lead to an **inaccurate assessment of awards in similar cases.** Moreover, the proposed £80,000 cap for serious abuse claims does not take into account the **effect a trial can have on a survivor**; a survivor may be more likely to settle for a lower amount through trial than if pursued through the proposed redress scheme.

**It must also be considered that some abuse cases were settled out of court on confidential terms.** There is no recognition of pressures that may have been brought to bear, the claimants' personal circumstances and dynamics, and power relations that could have impacted on their decision to settle for what might have been a lower than expected amount. The following quotes give an insight into the trauma, stress and disappointment a survivor experienced when trying to deal with an abuse claim:

I was offered a settlement of £30,000 ...<sup>6</sup> it was a slap in the face for what I had been through. I'm still devastated because I feel like they made me suffer all over again. I got shingles, my immune system went downhill, I couldn't breathe; I had a doctor saying to me you have to stop this court stuff because

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<sup>6</sup> The actual amount awarded has been changed to safeguard the interviewee's identity.

you are making yourself ill ... But I couldn't because the alternative was to kill myself. I went through to the end, more for their acknowledgement than anything. [Interview F: August 2016]

This is what hurts. They abused me all over again because on a daily basis my solicitor was on the phone saying – they've moved them (nuns), they've changed their names (nuns). The only thing they would say was statute of limitations, statute of limitations, statute of limitations. Oh the tactics ... You know something, they made me suffer all over again and my family had to watch me go downhill. (Interview F: June 2015)

### *The deceased*

An additional consideration was what happens to those who were abused but died before they could claim compensation, or before their claim was dealt with: 'At least twelve applicants to the Inquiry have died since they made an application ...' (HIAI 2017:239). **The HIAI Report recommends that the spouse or children of a person who died after a prescribed date should be able to claim 75% of the award** that would have been made to the deceased for their abuse compensation. The recommendation says **the deceased should have died after 29 September 2011 in order to be eligible**. This corresponds with the date on which the Northern Ireland Executive announced that it intended to set up an Inquiry although it could be argued that such an artificial cut-off date is inappropriate. According to the HIAI, it was not until 29 September 2011 that the state was made aware of systemic institutional abuse, yet in its own Report the HIAI states that the state's awareness of institutional abuse was at least as early as April 1953 (HIAI 2017:44-45).

**The rationale for the 75% recommended by the HIAI is not clear; at best it is ambiguous.** To support its recommendation, the HIAI refers to information the Hart Inquiry gathered from survivors through a questionnaire distributed to survivors who had contacted the Inquiry (541). In response to the HIAI question of what percentage of compensation owed should be paid to a deceased claimant, **52% of respondents (282) said 100% should be paid and 3% (18) said a lower percentage**. There was a very high percentage of responses that were either 'not returned' or gave 'no answer' to this set of questions. Moreover, the



wording of the question is somewhat misleading as it could be interpreted in a number of ways (HIAI 2017:253-254, Appendix 2).

**The consensus view of survivors in the survivor-led Panel of Experts workshops was that the spouse or children of deceased survivors should be entitled to put forward a claim for full redress on behalf of the deceased; and 100 out 126 respondents in the survivor-led questionnaire agreed that 100% should be paid.** In such situations, it was felt that a payment to the spouse or children of a deceased survivor would be an acknowledgement and mark of respect. In contrast to the HIAI recommendations, in the **Republic of Ireland, full awards were available to the children or spouse of persons who died** (after a designated date, 11 May 1999) (Residential Institutions Redress Act (2002), sec. 9, 8). Similar results were obtained under the Canadian agreement (Government of Canada 2016).

### *Prior lawsuits*

Under the **HIAI Report recommendations, where civil proceedings have been commenced by a survivor, they should not be entitled to be compensated twice for abuse they suffered or to have a payment ‘topped up’ through the redress plan.** Claimants must decide whether to continue their action in court or apply to the proposed Redress Board. **To qualify for eligibility under the redress plan, claimants would need to terminate their civil proceeding before applying to the HIA Redress Board.** However, this would not prevent a person who has already received compensation in civil proceedings in respect of abuse suffered in one institution from receiving compensation from the Redress Board for abuse suffered while **a resident in a different institution** provided it was not managed by the same organisation against whom earlier civil proceedings were taken. If a person was unsuccessful in civil proceedings, where their case was **dismissed solely because of the use of the defence of limitations**, the HIAI recommends that they should be able to apply to the Redress Board.

In response to the HIAI Report from a survivors’ perspective, prior lawsuits and settlements raise a number of equality of treatment concerns. **To be clear, survivors are not requesting that ‘a person should be entitled to be compensated twice for abuse they suffered’.** They take the position that if the awards of compensation for defined injuries and harms

**under the Redress Board are *higher* than those offered by the courts for the same injuries, those survivors should be able to ‘top up’ or receive a ‘gap’ payment to bring them in line with others in the new type of payment. Otherwise, they believe there will be inequality in treatment or a two tier system.** In response to the question whether survivors who went through the courts or reached an out-of-court settlement, and received some compensation, should be allowed to apply to the Redress Board for a ‘top-up’, a significant number of survivors responded yes (101 = 80.2%) and only 12 people said no (12 didn’t know; one did not answer).

Moreover, compensation awarded through litigation has the unforeseen drawback of impacting directly on survivors’ social security benefits. In some situations, this resulted in additional hardship to an already vulnerable group of people. It is worth quoting at length what one survivor wrote in the comments section of the Panel’s questionnaire:

I feel it’s important for victims who received pay-outs to be entitled to redress. There are a number of issues that should be considered. Perhaps most importantly are mental health related issues. In my own court case, I was suing for mental health compensation for therapeutic counselling. However, because of the way the money came to me my benefits were stopped. I feel it’s also worth considering that many of the people that got payouts from the nuns were pioneers in bringing this issue into the public arena ... without these early pioneers coming forward I do not believe that we would be where we are today. It would be a perverse kind of justice that penalised the people who campaigned for so long ... We live in a society that is too ready to punish people who come forward with criticisms of the system. (Code ID119)

The following written questionnaire comments further reflect the sense of injustice felt by survivors who accepted settlements:

Heinous is the description of such a recommendation by Sir Anthony Hart; it seems a complete con to the victims who put much effort without legal advice and had the trauma to go with the inquiry, which would not have taken place without us ... It’s an insult not justice. Victims were forced to take their

pittance amounts. I know, I was part of the abuse in the law courts. (Code ID103)

I settled out of court; my barrister told me there were worse cases than mine. I told my solicitor I am a 66 year old man and I remember all the bad things that were done to me by the people who were there to care for me. I just wish it was finished for me and my family. (Code ID99)

**In effect, if accepted, the HIAI recommendation would lead to a two tier system that doubly disadvantages survivors who had previously received unsatisfactory settlements. In addition, making an application for redress should not require the claimant to give up any right to bring a claim for damages in the courts.** In the Republic, survivors were given one month, or such a greater time period as may be prescribed, to decide whether to accept or reject the award made by the Board (Residential Institutions Redress Act (2002), sec. 13(4)). It was only when an applicant accepted an award that they were required to agree in writing to waive any right to institute civil proceedings arising out of the same acts. From the outset, **the HIAI has recommended that survivors must choose one or the other compensation route. This seems an unnecessary constraint on survivors' choice of a right to remedy.** The two could be combined. The objective of the state should be to make a redress scheme attractive enough so that survivors would not elect to take the more demanding and risky litigation route. While the state has a margin of appreciation as to how it provides remedies to survivors, **international standards call upon them to guarantee reparation, restitution of rights, adequate compensation and disclosure of the truth in a public forum, as appropriate, and to provide a guarantee of non-recurrence. It is arguable that more than one forum of redress is required to achieve these objectives. International standards do not prohibit the exhaustion of more than one avenue to obtain compensation and in fact state that proper assistance should be provided to those wishing to exercise their rights to remedy.**<sup>7</sup>

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<sup>7</sup> 'An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies (emphasis added).' UN Basic Principles.

## **Part 2: HIA Redress Board**

### *Design and process: obstacles, impediments and opportunities*

The design of a redress scheme can take many forms. Winter (2017:1) makes the point that, because the client populations of redress programmes are often profoundly disadvantaged, programme providers have good reason to optimize the design of redress programmes for applicants. This section analyses the HIAI proposed redress scheme design and procedural issues including appointments, ‘paper only process’, legal representation, dominance of legalism and survivor participation. The potential effects on survivors’ rights, interests and dignity are explored, including fair and just compensation, equality of treatment, legal protection, exclusions, case hierarchies and participation/agency.

### *Appointments: allure of legalism*

The HIAI Report stipulates that a specific HIA Redress Board should be established to administer the compensation scheme. It should be responsible for receiving and processing applications for, and making payments of, compensation, and should be set up by the Northern Ireland Executive. It should consist of a Chief Executive and the requisite administrative staff. The HIAI Report does not specify whether the Redress Board should be a legislative or administrative process. The Lord Chief Justice should appoint a judge to be President of the Redress Board and judges to the Board as may be required. The President of the Redress Board would be responsible for the allocation of business to, and discharge of functions by, and all matters relating to, judicial members. Rules governing the applications for compensation and the procedures to be followed by the judicial members, including Appeal Panels, should be made by the Department of the Northern Ireland Executive responsible for the funding of the Redress Board, subject to the consent of the Lord Chief Justice (HIAI 2017:236, paras. 32-38). **The proposed appointments process is subject to limitations. Methods for overcoming some of them are discussed below.**

The HIAI Report recommends that adjudicators should be drawn from the judiciary, either practising or retired. A single judge sitting alone should decide on eligibility and compensation. **This highly legalistic model appears out of step with redress boards internationally. In the Republic of Ireland, Sweden and Canada, redress boards were**

**multidisciplinary, consisting of active or retired judges and other non-legal experts in paediatrics, psychiatry, psychology and social work, or at least have access to non-legal experts in the course of the hearing process** (RIRB 2014:7; Assembly of First Nations 2004:33-35; Skold and Jensen 2015:166). The complex appraisal of historical child abuse compensation claims will require sensitivity and awareness of the distinct and specific needs of victims of such abuse. The HIAI proposed scheme will interpret, assess and arbitrate abuse claims exclusively through a legal lens within which legalistically dictated logic can be restrictive and assumes the self-evident ‘rightness’ of the rule of law. **The resolution of institutional child abuse claims is not, and should not be, the sole preserve of the legal profession.** These observations are not to denigrate the importance of law and legal analysis in the processes of redress but rather to suggest that legalism tends to foreclose questions from other complementary disciplines and perspectives other than the law (McEvoy 2007:414-417). **Importantly, redress schemes are supposed to offer an *alternative* to the judicial route. The proposed Redress Board and processes replicate the County Court model in Northern Ireland and the inflexibility that method of decision-making represents.**

**The survivor-led Panel of Experts, on the other hand, recommend** that in a settlement resolution process where expert witnesses will not necessarily be called to explain medical reports and the symptoms and severity of the harms, **it is essential that at least one of the adjudicators has the education and experience to evaluate, understand and explain the medical nature of the claims; the physical, social and psychological consequences; and the future care needs of the survivors.** In addition, that, in the interest of fairness and appearance of fairness, **the Board should be made up of a range of disciplines:** legally and medically trained people, and/or individuals with a therapeutic background with specialised knowledge in the fields of psychology or psychiatry and with particular knowledge and understanding of child abuse, as well as those with dispute resolution skills. There should also be a reasonable balance between the number of men and women appointed. Survivors should have the option of choosing between a **male or female adjudicator.**

### ***Legal representation***

The HIAI Report recommended that applicants should be eligible for Legal Aid to allow them to obtain legal assistance to make an application for an award based on the Country

Court Scale. The HIAI Report acknowledges that, in order for survivors ‘to pursue their claims effectively, applicants to the HIA Redress Board, *particularly those who were resident in an institution not investigated by the Inquiry*, will require legal representation in order to obtain the necessary evidence to bring their application’ [emphasis added] (HIAI 2017:248). **This is an important recommendation as it has consequences for equality of treatment of survivors.**

**The Panel of Experts recommends** that survivors should have the choice of having legal representation for their individual claims for redress. Legal fees should be subject to a cap at a reasonable level. Reasonable disbursements should also be paid. This fee should be paid by the state. Legal aid in Northern Ireland is means tested. Survivors are among the most vulnerable, marginalised and economically disadvantaged groups in society. A sizeable number are likely to be low income earners but even a low income is likely to mean that they will not qualify for legal aid and will be deemed ineligible. This could impede access to legal representation (unless self-funded). Legal aid is the main way those who are economically disadvantaged can still receive legal representation. Exceptional Legal Aid can be granted under Article 10A(2)(a) of the Legal Aid Advice and Assistance (NI) Order (1981). However, legal representatives in Northern Ireland have informed the authors that survivors of historical child abuse have struggled to get legal aid for their claims under the Exceptional Legal Aid. Without legal protection, vulnerable people will be left to struggle to access records and build their claim for compensation; resulting in a greater burden on some survivors to evidence levels of harm, with all the associated risks of re-traumatisation. In the Republic of Ireland and in Canada, claimants’ legal fees were paid. To ensure survivors have legal representation, the government should cover (capped) legal fees. ‘Denial’ of legal protection would be in breach of Article 6 ECHR on access to justice.

### ***‘Paper only’ process***

Under the HIAI proposed Redress Board, the structure and procedures for awarding compensation would be as follows:

- Decisions as to whether compensation should be paid, and if so the amount to be paid, should be made solely on the basis of written material submitted by the

applicant and any other written material the judicial member (or the Appeal Panel) considers relevant.

- A single judge sitting alone should decide on eligibility and compensation.
- There should be brief written reasons for decisions.
- Only in exceptional cases should oral or new evidence be considered. In both the standard payment and individual assessment in serious abuse awards, oral evidence should not be permitted except in exceptional circumstances.
- Prior statements made at the HIAI should be the basis for determining eligibility and compensation.
- Claimants should have a right to appeal unfavorable decisions.
- A panel of 3 judges (selected by the President of the Redress Board) should decide appeals; their decision would be final and be by a majority.
- The Appeal Panel should rely only on paper material put before the first judge; and the appeal should take the form of a complete reconsideration of the application.
- Only in exceptional cases should oral or new evidence be considered. An oral hearing would be in private.
- Decisions should give brief written reasons (HIAI 2017:237-238).

**In addition to being a very legalistic procedure, a ‘paper only’ process puts a very heavy burden on survivors.** Proving that they have been ‘damaged’ through institutional records, police reports or physiological assessments alone that may not be complete or accurate will result in many worthy claims being dismissed. **Curiously, the HIAI itself identified serious gaps and inaccuracies in institutional records.** It has stated that it experienced difficulties in obtaining historical records and some of the material was inaccurate. Analysis of HIAI transcriptions for the 15 modules, covering 22 institutions investigated by the HIA Inquiry, shows the difficulties encountered. In almost all of the modules, barristers to the Inquiry raised concerns, as indicated in the following quotes: ‘Some records have apparently been lost, destroyed or not properly maintained in that there are gaps in the material obtained’ (HIAI 2014/2015, Day 1:28, 51); ‘It has been suggested ... one institution disposed of records when the home closed’ (HIAI 2014/2015, Day 2:81); ‘It may be the case, as Sister Brenda contends, that much documentation which would have been of assistance to the Inquiry in its work is no longer in existence’ (HIAI 2014/2015, Module 4:28-29).

A number of participants at workshops voiced the opinion that historical investigations present significant challenges: records have been lost or destroyed over time, and potential witnesses may be dead or claim to be suffering ill-health and/or are unable to be located. This has created anxiety and was viewed by survivors as a matter of serious concern. Given the problems identified with documentary evidence, claimants alleging serious abuse should be permitted to give oral evidence and call witnesses in support of their claims.

In the Republic of Ireland Magdalen Laundries settlements, Winter (2017:8) points out that there were problems with assessing residence-duration due to gaps in the institutional records and the fallibility of human memory. For approximately 50% of applicants, building an application required cross-referencing the files obtained from the religious orders with voting, employment, education and criminal records. Informal hearings may be required to assist in those inquiries.

**The systemic flaws in institutional documentation have been identified in other jurisdictions where institutional child abuse claims have been made** (Skold and Jensen 2015; Stanley 2015; Wilson and Golding 2016). They present compelling evidence that institutional records generally are deeply flawed and poorly kept; they highlight that children self-censored; that there is frequently a lack of reporting and documenting violations; and they describe character assassinations and opinionated and value laden accounts contained in official records. **This demonstrates the unfairness of requiring a survivor to ‘prove’ serious abuse in a ‘paper only’ process and why the option of giving oral evidence is important. Otherwise, what may result is that the only successful cases will be those that win the lottery of complete and accurate documentation. Clearly, survivors should not be left to face the burden of effectively ‘investigating’ their own experiences without having the powers or experience to do so or the ability to assess the credibility of documentation.**

Furthermore, there will be the additional complicating issue of the rights of survivors to access records such as social services that may inform their claims but are not readily available or in the public domain. Even with the assistance of a COSICA, whose powers and resources are undetermined, in the cases of serious abuse this will present a formidable challenge for survivors to overcome. The HIAI Report recommends that much of the documentation obtained by the Inquiry will be placed in the Public Record Office of Northern Ireland to assist the Redress Board in assessing compensation claims. This provision, while



beneficial to those who appeared before the Inquiry or whose residences were investigated, **discriminates against those survivors who resided in the 43 homes the Inquiry elected not to investigate.** This differentiation in treatment will **create a hierarchy of cases** whereby some survivors will be more enabled to prove their cases than others. On a related matter, clarification is required on the powers of the Redress Board to acquire documents from public and private authorities and the extent to which the survivors and their representatives will have access to them.

The disadvantages of the ‘paper only’ process are **compounded by the recommendation that a judicial member of the HIA Redress Board, sitting alone,** should decide whether compensation should be payable and the amount to be paid, giving only brief reasons. **The requirement to provide only brief reasons will make it more difficult for a survivor who has received an unfavourable result to identify reasons to appeal the decision. This solo decision-making process also seems out of step with redress boards in other jurisdictions.** In the Republic of Ireland, the Redress Board consisted of a chairperson and 10 ordinary members (RIRB 2012:7). The hearings were said to be as informal as possible and conducted by a panel consisting of two or three members of the Board. The hearing enabled the survivor or the Board to call witnesses to give oral evidence and to question other witnesses. In Sweden, each case was treated by three or four commissioners and always chaired by a judge (Skold and Jensen 2015:166). Under the Canadian redress plan, adjudicators sitting alone conduct an oral hearing and make the first determination of a claim, where witnesses can be called to give evidence. Detailed reasons for the decision are required and survivors may appeal a decision twice and a final appeal may in some cases be made to a judge in a supervising court. Undoubtedly, some survivors will be relieved that they do not have to give more oral evidence but this should be optional. Considered from an official perspective, **a ‘paper only’ process offers ‘straightforward, effective, and efficient’ (HIAI 2017:242)** processing of claims, which is less costly and time-consuming but the question must be asked whether cost savings should be allowed to trump fairness for survivors.

### **Oral evidence: voice and agency**

From a survivor viewpoint, testifying in adversarial court proceedings exposes them to invasive personal scrutiny and can potentially re-traumatise and re-victimise. Similar reasons

would apply to compelled oral testimony before the Redress Board regardless of the fact that redress schemes are supposed to be inquisitorial and non-adversarial. In the workshops we held, survivors pointed out that they were expected to retell their ‘story’ on numerous occasions and over time (institutions, police, HIA Acknowledgement Forum, Statutory Inquiry, civil cases, counselling and perhaps a redress scheme). The burden on survivors of retelling their stories of abuse and injuries, and the potential re-traumatising effect, is a valid point. The proposed HIAI ‘paper only’ process would cushion survivors against such stress. **Arguably, if victims are properly supported and represented, a ‘paper only’ process has much to recommend it. However, in response to the Panel’s question whether survivors should have the choice to give oral evidence/or give evidence in person to the Redress Board, almost all respondents said yes (115 = 91.3%). Thus, from a survivor perspective, oral evidence should be introduced as a matter of *choice*; it should not be *mandatory*.** Without choice, survivors who did not attend the HIAI, or spent time in one of the **43 non-investigated institutions, are in effect ‘silenced’ and disempowered.** Unless survivors are given the choice to give oral evidence, the individual assessment structure in the Northern Irish proposed redress scheme is stripped of a key feature that tends to define this model elsewhere, namely participant agency. Abused children may learn that silence is the response to abuse; frequently no one believed or listened when they tried to tell of their abuse. **Given the initial silence, secrecy and cover-up that has plagued the issue,** there are good reasons why some survivors may now wish to give evidence and tell ‘their story’ to a redress board. If a survivor opts to give oral evidence, it should be taken in an inquisitorial fashion, not an adversarial one. **Additionally, survivors making a serious abuse claim should be allowed to introduce new evidence over and above that gathered by the HIAI, especially those who did not appear before the Inquiry. Claimants should be allowed legal representation and witnesses should be permitted to give evidence where necessary.** In the Republic of Ireland, survivors were permitted if they wished to give oral evidence to the Redress Board or to call witnesses to give oral evidence on his or her behalf; the Board could request an oral hearing (Residential Institutions Redress Act (2002), sec. 10(8)).

In the absence of addressing the above structural impediments and constraints, it is conceivable that the Northern Irish scheme could be in danger of replicating the Swedish Redress Board model that yielded a 54% rejection rate.

## Equality of treatment/hierarchy of cases

There is an evidence differential between the 22 institutions investigated by the HIAI and those which were not investigated. As pointed out above, there were **43 institutions that the HIAI received complaints of alleged abuse about but which it felt that further investigation was not justified.** With regard to the 43 institutions, the HIAI Report states that, ‘we emphasised that this did not mean that we had decided that abuse did not occur in those homes or institutions. Any compensation scheme should provide for those who may have been abused in homes or institutions that we did not investigate’ (HIAI 2017:234, para. 26). It is also noted that there may be other institutions that no longer exist. Systemic abuse found in the 22 institutions investigated by the HIAI ensures those survivors will receive the standard payment without having to prove abuse. Survivors from the 22 institutions that were investigated will only have to demonstrate they resided in such institutions in order to receive their common experience compensation. **In contrast, those survivors who attended the 43 non-investigated institutions will have to prove eligibility for the standard payment on the balance of probabilities (in the absence of any documentary evidence in many cases). They will have to start from scratch. This places these survivors in the unenviable position of having to essentially turn investigator (with no skills) to gather their own evidence in order prove there was a ‘hostile environment’ or they witnessed abuse.** In the more serious abuse cases, in the absence of evidence of the kind gathered for the 22 residences that were investigated by the HIAI, the challenges will be compounded for these survivors, with or without legal representation. In this unequal landscape, **a hierarchy of claimants is likely to emerge,** thus creating inequitable chances of success for some but not for others. It is also likely that under these circumstances the most difficult cases to prove may be ‘put to the back of the queue’, exacerbating the embedded inequities.

## Participation

Redress schemes are arguably the most victim-centred justice mechanism currently available and the most significant means of making a difference in the lives of victims (de Greiff 2006). In the literature, survivor participation tends to be understood narrowly as giving testimony and/or ‘telling one’s story’. However, the conceptualisation of participation utilised in this Position Paper is much broader and deeper as it means full and effective participation of survivors whose rights are affected. For redress to be truly meaningful, victims need to

take part in the initiation, design and implementation of redress measures. The importance of meaningful involvement of victims in designing and implementing redress has been underscored by various international authorities and declarations. In fact, a participatory process has become one of the guiding principles to build a successful redress programme.<sup>8</sup> In the Panel's survivor-led questionnaire, almost all survivors agreed (105 = 83.3%) that victims should be consulted and involved in drawing up the Redress Board Terms of Reference (5 said no; 14 didn't know; 2 didn't answer).

If survivors' perspectives are incorporated into a compensation plan, it is highly likely that many more people will be drawn into the settlement process instead of going to the courts.<sup>9</sup> A measure of the success of any compensation process for institutional abuse is the number of people who are willing to trust that it will produce a fair and just resolution of their claims. Through the process of settling historical institutional abuse claims, Northern Ireland has the opportunity to set an international standard and methodology for dealing with systemic violations of human rights. Such a result would enhance its reputation as a leader in the world for the respect of human rights at home and abroad – a positive and desired outcome of a tragic past.

Survivors' voice is an important source for evidence-based policy; without it, reparative measures are unlikely to meet their needs and could fail. As such, there are very good practical reasons why survivors should be given the space to articulate their needs and priorities and to respond to recommendations for redress. International experience suggests that it is essential to involve victims in the process of designing and implementing reparations programmes (UNCHR 2005:102, para. 59). Moreover, international standards on involvement in decisions which affect rights require involvement at the time when 'all options are open' and there is a genuine opportunity to influence outcomes.

## **Conclusion**

The primary focus of this position paper was an analysis of the proposed compensation package for historical institutional child abuse in Northern Ireland. Key elements of the

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<sup>8</sup> See, for example, UN 2005, Principle 32; Declaration of Basic Principles of Justice for victims of Crime and Abuse of Power (1985) UNGA Res 40/34, para. 6(b); UN Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* (Report, S/2004/616, 2004) para. 16.

<sup>9</sup> In Canada, after a nation-wide process of gathering survivors' opinions on what they wanted from redress and incorporating them into the agreement, more than 90% approved the final result.

proposed Redress Board's design were explored. A number of structural, procedural and substantive flaws were identified and improvements recommended, including expanding the scope of eligibility for the common experience payment; adjusting the common experience payment to take into account the amount of time spent in the institutions; increasing the common experience payments to be consistent with those in other jurisdictions; making legal aid available for all of the survivors regardless of means; taking a multidisciplinary approach to adjudication and the selection of adjudicators; assessing and evaluating harms and acts separately; correcting inequities caused by the lack of investigation through flexible evidentiary rules and oral testimony; and supporting all hearing decisions with detailed reasons. Substantively, the survivor-led Expert Panel recommends that claims be allowed for loss of opportunity or loss of income and that the balance of probability standard be replaced with the plausibility standard of proof for causation. Where gaps exist in the documentary evidence, the claimant should not be punished. On the contrary, there should be a presumption that the missing evidence would benefit the claimant. Finally, levels of compensation should be comparable to those in other common law jurisdictions that have dealt with similar acts and harms. In the case of a deceased claimant's proven claim, the heirs should receive 100% of the compensation awarded.

The effects of the proposed procedures on rights, dignity and interests were assessed from the standpoint of survivors. This position paper concludes that the positive elements in the HIAI proposed redress scheme, such as a state-funded out-of-court process for granting compensation for the common experience and serious abuse; an apology; a memorial; protection of social security benefits; and the appointment of a commissioner should be maintained.

However, the HIA redress recommendations fall short of what survivors require largely because of the absence of their input. If implemented in its current form, the scheme could impede recognition, silence survivors' voices and fall short of fair and just compensation. In order to address issues of access to justice, adequacy of compensation and equality of treatment, a number of changes should be made to the scheme and every element should be informed by input from survivors. It is hoped that the suggested improvements offered here will inform policy development and contribute to the speedy resolution of the redress debate for survivors of historic institutional abuse.

## **APPENDIX 1: Methodology**

Five full-day workshops were held in October and November 2015, with over 75 survivors participating to establish what survivors want from redress. A methodology built around small, closed workshops was designed to provide a ‘space’ that would empower participants to share their views on redress measures and schemes. Workshops were recorded and transcribed; thematic analysis and frequency coding was undertaken on both sets of data. The workshops were held in Belfast and Derry; a key criterion was that the workshops should reflect a broad cross-section of survivors of institutional abuse. Local facilitators with extensive experience of working with survivors conducted the workshops. Draft copies of the reports were circulated to survivor groups involved in the research to verify content. Every effort was made to include a broad sample from the 22 institutions investigated by the HIAI, including state, church and privately-run institutions. A total of 43 individual interviews were conducted with survivors.<sup>10</sup> The present position paper further draws on document analyses, including analyses of HIAI transcripts, dialogue with survivors and a questionnaire.

Following the publication of the HIAI Report, the Panel convened a public meeting on 3 February 2017 to discuss and ascertain survivors’ responses to the proposed redress recommendations. Invitations were circulated widely to a broad cross-section of survivors through existing networks and social media. Between 60 and 65 survivors attended; there was a full and lively discussion. The meeting was recorded (with consent) and detailed notes were taken. These were written up, coded and thematically analysed. The Panel met separately to scrutinise the HIAI recommendations and to receive further feedback from survivor groups. Obviously, such work cannot capture the views of those whose experiences remain private.

The Panel’s questionnaire was distributed at the public meeting and was emailed and posted to survivors in Northern Ireland, Republic of Ireland, UK and Australia. The sample reflects a broad cross-section of male and female survivors of institutional abuse who attended the HIAI and those who did not. A total of approximately 205 questionnaires were distributed, 126 were completed/returned; coded and analysed.

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<sup>10</sup> The interviews are part of a wider study conducted by a member of the Panel.